[Cite as *Luettke v. Autoneum N. Am., Inc.*, 2015-Ohio-3210.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Ruth A. Luettke	Court of Appeals No. L-14-1236
Appellee	Trial Court No. CI0201302261
v.	
Autoneum North America, Inc., et al.	**DECISION AND JUDGMENT**
Appellant	Decided: August 7, 2015

* * * * *

Theodore A. Bowman and Thomas J. Schaffer, for appellee.

James F. Nooney and Thomas J. Gibney, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Autoneum North America, Inc., appeals the judgment of the Lucas County Court of Common Pleas which granted summary judgment in favor of plaintiff-appellee, Ruth A. Luettke, finding that her injury occurred during the course and scope of her employment with appellant and affirming the decision of the Bureau of Workers' Compensation to allow her to participate in the fund.

{¶ 2} Appellant raises two assignments of error for our review:

A. First Assignment of Error: The trial court erred in granting Luettke's motion for summary judgment.

B. Second Assignment of Error: The trial court erred in denying Autoneum's motion for summary judgment.

{¶ 3} When reviewing a summary-judgment ruling made by a court of common pleas from an appeal of a decision by the Industrial Commission, an appellate court applies the same de novo standard used to review any other summary-judgment ruling. *Conley-Slowinski v. Superior Spinning & Stamping Co.*, 128 Ohio App.3d 360, 363, 714 N.E.2d 991 (6th Dist.1998). The standard of review for a grant of summary judgment is de novo, or without deference to the lower court's decision. (Citations omitted.) *Id.*

{¶ 4} This court has independently, fully and carefully reviewed the record and the applicable case law and finds that the October 7, 2014 opinion and judgment entry of the Honorable Frederick H. McDonald is an appropriate and lawfully correct discussion of the facts and law involved in this case. Accordingly, we adopt the trial court's well-reasoned decision as our own. *See* Appendix A.

{¶ 5} Appellant's first and second assignments of error are found not well-taken. The judgment of the Lucas County Court of Common Pleas is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE

APPENDIX A

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Ruth A. Luettke,	*	Case No. CI0201302261
	*	
	*	
Plaintiff,	*	JUDGE FREDERICK H. McDONALD
	*	
-vs-	*	
	*	OPINION AND JUDGMENT ENTRY
Autoneum North America, Inc., et al.,	*	
	*	
	*	
Defendants.	*	

This is an appeal from an order of the Industrial Commission granting plaintiff-appellee, Ruth A. Luettke, the right to participate in the Ohio Workers' Compensation Fund for "sprain left knee and acute partial quad tendon tear left." The matter is presently before the court upon cross-motions for summary judgment filed by plaintiff and defendant-appellant, Autoneum North America, Inc. The parties have essentially submitted the case for the court's determination of what they agree is a dispositive legal issue: whether an employee suffering from a preexisting health impairment is entitled to compensation for a subsequent injury precipitated by a specific work-related strain or trauma that would not have injured a normal, healthy person. For the following reasons, I find that the issue should be answered in the affirmative and, therefore, that plaintiff's motion for summary judgment should be granted and defendant's motion denied.

I. BACKGROUND

Plaintiff has been continuously employed by defendant since October 7, 1985, albeit in various capacities. For the first 20 years of her employment, plaintiff experienced no problems with her left knee. In October 2006, while working in defendant's molding department, plaintiff sustained a fracture of her left tibia in a work-related fall. An MRI of plaintiff's left knee, which was taken on November 6, 2006, revealed "mild to moderate medial compartment osteoarthritis and mild osteoarthritis in the patellofemoral joint lateral compartment." The fracture was treated nonsurgically and plaintiff returned to work in late 2006 or early 2007.

Thereafter, plaintiff experienced occasional discomfort in her left knee with increased activity or when performing a job that puts "a lot of strain on my leg." She went for regular three-month check-ups with her family physician, and occasionally scheduled appointments when experiencing episodic pain, but her condition never interfered with the performance of her job duties or caused her to miss any work.

On August 26, 2012, plaintiff was working the afternoon shift as a "shipping driver" in the sequencing department at defendant's Oregon, Ohio plant, a position that she held for approximately three months. As part of her job duties, plaintiff was required to load and unload semi-trailer trucks as they backed into the receiving docks at defendant's warehouse and, on occasion, drive the trucks between the warehouse and defendant's manufacturing facility approximately 300 yards away. There are eight truck bays at the warehouse, and each is equipped with an approximately 8 x 8 foot corrugated steel dock plate that connects or bridges the gap between the loading dock and the semi trailer. The dock plates are spring-activated, but the spring at the lip of the dock plate on bay number six was broken at the time, and the plate had to be manually manipulated into position.

At approximately 9:00 p.m., one of defendant's semi-truck drivers backed his trailer into bay number six to be unloaded. Plaintiff, who was about six hours into her shift and working alone on the dock, described the ensuing event:

> A driver had backed into the dock, and I went to open the dock plate, and it's broken. It's been broken for quite some time. We had to use a pry bar to pry up the lip of it, and normally it's supposed to go back down on its own, and it doesn't because of the missing parts.
>
> And after I was—I was holding the pry bar opening up—holding up the lip of it, and I had all my weight on my left foot and went to spin to jump on the dock plate to get it to go down in the trailer so that I could drive on it, and that's when I felt this awful snap in my knee.

Plaintiff explained that at the time her knee snapped, she was "holding back on the pry bar" with her right foot in the air as she spun with full weight on her left foot in preparation to jump onto the dock plate. Plaintiff further explained that she had used the pry bar to maneuver the broken dock plate into position on at least 10 occasions during her three-month tenure as a shipping driver, but that she always had help on previous occasions. The night of her injury was the first time that plaintiff performed the maneuver on her own.

Following her injury, plaintiff became nauseous, "doubled over," and sat on the floor until help arrived. Minutes later, the driver of the semi-truck, An Pham, entered the warehouse and found plaintiff on the ground just behind the dock plate. After plaintiff told him that "something snapped," Mr. Pham helped her over to a picnic table. He then manipulated the broken dock plate into the back of his trailer, unloaded the trailer, and left with the truck. Mr. Pham stated that he had observed plaintiff during the first six hours of her shift on August 26, 2012, and that she was working normally and did not exhibit any signs of pain or trouble in performing her job. Meanwhile, one of defendant's supervisors, Mike Hattery, was notified of the incident. Mr. Hattery, who was working at the time in the production facility, drove over to

the warehouse, called a cab to transport plaintiff to the hospital, and waited with plaintiff until the cab arrived.

Plaintiff was driven by cab to Bay Park Hospital, where she was diagnosed with a knee sprain and released with instructions to follow up with her primary care physician. The next day, plaintiff presented to Occupational Care Consultants ("OCC") in Oregon, Ohio, which provides medical services for employees with work-related injuries upon employer referral. She was there examined by Dr. Joel A. Yeasting, who had treated her for the fractured tibia in 2006. Dr. Yeasting's examination found mild swelling of the medial aspect of plaintiff's left knee and minimal tenderness of the patella tendon. He diagnosed a left knee sprain and recommended an MRI to evaluate possible internal derangement. An MRI was performed at Bay Park Hospital on September 6, 2012, and compared to a previous study of plaintiff's left knee that was taken on June 15, 2011. The radiologist reported significant partial tearing of the quadriceps tendon "consistent with an acute on chronic process."

On September 12, 2012, plaintiff returned to OCC and was examined by Dr. Thomas E. Lieser. Based on his physical examination of plaintiff and a review of the MRI report, Dr. Lieser diagnosed an acute partial tear of the left quadriceps tendon and recommended that plaintiff be evaluated by an orthopedic surgeon.

On September 24, 2012, plaintiff was evaluated by Dr. Nabil Ebraheim, an orthopedic surgeon at the University of Toledo Medical Center. Based on the MRI of September 6, 2012, Dr. Ebraheim also diagnosed plaintiff with an acute partial tear of the left quadriceps tendon. Before considering surgery, Dr. Ebraheim felt it necessary to ascertain the extent and duration of the tear. Accordingly, he instructed plaintiff to obtain and return with the MRI that had been

taken on June 15, 2011. He then requested a comparison review of both MRI studies by Dr. Jacob Zeiss, a radiologist at the University of Toledo Medical Center.

On December 14, 2012, Dr. Zeiss reported that the 2011 study of plaintiff's left knee showed "moderate distal quadriceps tendinitis" and "minor scattered degenerative changes within the knee but only a small joint effusion." He concluded that the "appearance of June 15, 2011 would not raise significant concern for tendon rupture at that time," and subsequently explained by affidavit that the prior MRI showed "no major structural deficiency in the knee, and specifically no tear of the quadriceps tendon." In addition, Dr. Zeiss reported that the 2012 study "shows progression of the previous tendinitis," which raises a concern "for potential impending complete avulsion injury." Dr. Ebraheim ultimately performed a surgical repair of the tendon on May 3, 2013.

Plaintiff filed an application for workers' compensation benefits, and the Administrator of the Bureau of Workers' Compensation allowed the claim for left knee sprain and acute partial quad tendon tear. The allowance was affirmed by order of a District Hearing Officer for the Industrial Commission, which order was appealed by defendant. In an order dated December 28, 2012, a Staff Hearing Officer allowed the claim for "sprain left knee and acute partial quad tendon tear left," determining that despite her preexisting arthritis, plaintiff sustained "a new and distinct injury * * * resulting in the stated allowances." The Industrial Commission refused defendant's further appeal, and defendant filed its notice of appeal to this court on March 29, 2013. Pursuant to R.C. 4123.512, plaintiff filed her present complaint against Autoneum on April 10, 2013, alleging the right to continue to participate in the Workers' Compensation Fund and denominating the administrator as defendant-appellee.

On December 9, 2013, defendant filed a motion for summary judgment along with the affidavit of Frederick J. Shiple, III, M.D., who opined that plaintiff's injuries were caused by the natural progression of her preexisting arthritis, rather than the alleged incident of August 26, 2012. Defendant argued that plaintiff had failed to provide expert testimony to the contrary. In opposition, plaintiff submitted the affidavits of Drs. Lieser and Ebraheim, both of whom opined that her injuries were proximately caused by the workplace incident on August 26, 2012. Finding that genuine issues of material fact remained to be determined, this court denied summary judgment on February 8, 2014.

Following additional discovery, counsel for the parties requested a pretrial conference, which was held telephonically on June 26, 2014. Counsel informed the court that in light of the additional discovery, they had come to agree that the determinative issue in this case is legal rather than factual. Essentially, the parties and their respective medical experts agreed that plaintiff's injuries were triggered or precipitated by the workplace incident of August 26, 2012, but that such incident would not have injured a normal, healthy person. They posed as the dispositive legal question whether the 1986 "natural deterioration" amendment to R.C. 4123.01(C) and subsequent case law involving unexplained accidents abrogated the long-standing maxim that industry bears the burden of a worker's particular susceptibility or predisposition to injury.

Accordingly, at the request of counsel, the court vacated the previously established trial date and granted leave for the parties to file cross-motions for summary judgment on that issue. The parties have since filed their respective summary judgment motions, as well as their opposing memorandums and supporting replies.

The matter is now decisional.

II. SUMMARY JUDGMENT STANDARDS

The general rules governing motions for summary judgment filed pursuant to Civ. R. 56 are well established. In *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978), the Supreme Court of Ohio set forth the requirements that must be met before a motion for summary judgment can be granted:

> The appositeness of rendering a summary judgment hinges upon the tripartite demonstration: (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.
>
> The burden of showing that no genuine issue exists as to any material fact falls upon the moving party in requesting a summary judgment.

A party who claims to be entitled to summary judgment on the ground that a nonmovant cannot prove its case bears the initial burden of: (1) specifically identifying the basis of its motion, and (2) identifying those portions of the record that demonstrate the absence of a genuine issue of material fact regarding an essential element of the nonmovant's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). The movant satisfies this burden by calling attention to some competent summary judgment evidence, of the type listed in Civ.R. 56(C), affirmatively demonstrating that the nonmovant has no evidence to support his or her claims. *Id*. at 292-293. Once the movant has satisfied this initial burden, the burden shifts to the nonmovant to set forth specific facts, in the manner prescribed by Civ. R. 56(E), indicating that a genuine issue of material fact exists for trial. *Id*. at 293. *Accord Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988).

The Sixth District Court of Appeals has consistently held that summary judgment should be granted with caution in order to protect the nonmoving party's right to trial. As stated by the

court in *Viock v. Stowe-Woodward Co.*, 13 Ohio App.3d 7, 14-15, 467 N.E.2d 1378 (6th Dist.1983):

> We recognize that summary judgment, pursuant to Civ.R. 56, is a salutary procedure in the administration of justice. It is also, however, a procedure which should be used cautiously and with the utmost care so that a litigant's right to a trial, wherein the evidentiary portion of the litigant's case is presented and developed, is not usurped in the presence of conflicting facts and inferences. It is settled law that "[t]he inferences to be drawn from the underlying facts contained in the affidavits and other exhibits must be viewed in the light most favorable to the party opposing the motion, * * *." It is imperative to remember that the purpose of summary judgment is not to try issues of fact, but rather to determine whether triable issues of fact exist.

(Citations omitted.)

III. THE "EGGSHELL CLAIMANT" RULE AND ITS CONTINUED VIABILITY

Defendant contends that plaintiff's injuries are not compensable because they occurred primarily as a result of the preexisting natural deterioration and weakened condition of her left knee, rather than as a result of any activity or risk that was unique or particular to her employment. According to defendant, plaintiff was "simply turning on one leg" at the time at the time of her purported accident. Defendant argues that the simple process of turning is insufficient to produce the injuries for which plaintiff seeks compensation and that because of the degenerative condition of plaintiff's knee, her tendon was likely to have ruptured at any time. In support, defendant relies on the "natural deterioration" and preexisting condition" exceptions in R.C. 4123.01(C)(2) and (C)(4), the "special hazard" rule, and cases involving unexplained and idiopathic causes. Defendant maintains that these authorities supersede or override the so-called "eggshell claimant" rule, which deems the presence of a preexisting health infirmity irrelevant to the compensability of an injury.

Plaintiff contends that even though she suffered from an arthritic knee and tendinitis in her quadriceps, the undisputed evidence reveals that her injuries did in fact result from a specific

and traumatic work-related event. According to plaintiff, she was not "simply turning on one leg" at the time of her injury, as defendant contends. Instead, she was simultaneously pulling up on the broken dock plate and twisting with full weight on her left leg in preparation to jump on the plate, which actions are unique and particular to her employment. Plaintiff argues that the entire category of cases dealing with unexplained or idiopathic falls are inapposite, and that the rules developed in those cases should not be expanded beyond that context. Plaintiff further maintains that the natural-deterioration and preexisting-condition amendments to R.C. 4123.01(C) were neither expressly nor impliedly designed to negate the long-established principle that an employer takes its workers as they are, replete with physical impairments and diseases that predispose them to injury.

A. "Eggshell Claimant" Rule

R.C. 4123.01(C) sets forth the basic coverage formula: "'Injury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." Generally construed, "in the course of" relates to the time, place, and circumstances of the injury, while "arising out of" refers to the causal connection between employment and injury. *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277-278, 551 N.E.2d 1271 (1990). This case involves the arising-out-of prong of the coverage formula.

As evident by the conjunctive nature of the coverage formula, an injury is not compensable merely because it occurred or manifested itself at work. *Eggers v. Indus. Comm.*, 157 Ohio St. 70, 77, 104 N.E.2d 681 (1952). Workers' compensation is designed "only to protect the employee against risks and hazards incident to the performance of his work." *Phelps v. Positive Action Tool Co.*, 26 Ohio St. 3d 142, 144, 497 N.E.2d 969 (1986). For an injury to be

compensable, it must not only occur at a time and place associated with employment, but must also "fairly be traced to the employment as a contributing proximate cause * * *. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment * * *. *Hwy Oil Co. v. Bricker*, 130 Ohio St. 175, 179, 198 N.E. 276 (1935). Compensability depends, therefore, on "whether a 'causal connection' existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment." *Bralley v. Daugherty*, 61 Ohio St.2d 302, 303, 401 N.E.2d 448 (1980).

While personal frailties are not occupational risks, Ohio law has never denied compensation for an injury arising from an industrial accident on grounds that the injury would not have occurred except for the particular susceptibility of the individual worker. Prior to 1937, G.C. 1465-68 provided workers' compensation to employees injured "in the course of employment," but the phrase was judicially interpreted to include the requirement that the injury "arise out of the employment." *E.g., Fassig v. State ex rel. Turner*, 95 Ohio St. 232, 248, 116 N.E. 104 (1917), paragraph five of the syllabus. During that time, our courts explicitly recognized that an employee "is not barred [from compensation] merely because his impaired physical condition at the time he suffered the accident rendered him more susceptible to injury than a normally healthy man." *Indus. Comm. v. Betleyoun*, 31 Ohio App. 430, 433, 166 N.E. 380 (9th Dist.1929).

Effective July 10, 1937, G.C. 1465-68 was amended to reflect that compensation was limited to injuries "received in the course of, and arising out of, the * * * employment." 117 Ohio Laws 109. Ohio courts continued to recognize the compensability of injuries "'brought about by the exertions of the employee while engaged in the performance of his duties, or by the

conditions of the employment, * * * notwithstanding the workman may have been suffering from a preexisting infirmity which constituted a predisposing cause of such disablement.'" *McNees v. Cincinnati St. Ry. Co.*, 90 Ohio App. 223, 231-232, 101 N.E.2d 1 (1st Dist.1951), quoting 58 American Jurisprudence, Section 255. *Accord Williams v. Indus. Comm.*, 95 Ohio App. 275, 282-283, 119 N.E.2d 126 (12th Dist.1953) ("the fact that the employee brought to his employment an impaired or diseased body, upon which the exertions of the employment had a greater effect than upon a healthy person, does not negative the right [of compensation]").

Following the enactment of R.C. 4123.01(C), effective November 2, 1959, 128 Ohio Laws 743, 745, the Third District Court of Appeals explained in *Hamilton v. Keller*, 11 Ohio App.2d 121, 127-128, 229 N.E.2d 63 (3rd Dist.1967):

> Compensation is awarded for an injury which is a hazard of the employment acting on a particular employee in his condition of health. Every workman brings with him to his employment certain infirmities. The employer takes an employee as he finds him and assumes the risk of having a weakened condition aggravated by some injury which might not hurt or bother a perfectly normal, healthy person. If that injury is the proximate cause of the death or disability for which compensation is sought, the previous physical condition is unimportant and recovery may be had independently of the pre-existing weakness or disease.

The Supreme Court of Ohio also endorsed the view that "'[c]ompensation under our law is not to be denied because the injury would not have occurred except for the peculiar susceptibility of the individual worker.'" *State ex rel. Ohio Bell Tel. Co. v. Krise*, 42 Ohio St.2d 247, 251, 327 N.E.2d 756 (1975), quoting *LeLenko v. Wilson H. Lee Co.*, 128 Conn. 499, 503, 24 A.2d 253 (1942).

It was well-settled, therefore, that workers' compensation law prescribes no standard of physical fitness to which the employee must conform and that a health-impaired worker is

entitled to compensation for a subsequent injury precipitated by a specific work-related strain or trauma, even though the strain or trauma would not have injured a normal, healthy worker.

B. The Statutory Exceptions: Natural Deterioration and Preexisting Conditions

1. Natural-Deterioration Exception: R.C. 4123.01(C)(2)

Effective August 22, 1986, the General Assembly enacted Am.Sub.S.B. No. 307, which among other things amended the definition of "injury" in R.C. 4123.01(C) to exclude "[i]njury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body." R.C. 4123.01(C)(2). Defendant claims that this amendment abrogated the long-standing eggshell-claimant rule. However, the timing and language of the amendment, as well as subsequent case law, does not support defendant's claim.

It was clear at the time of its enactment that R.C. 4123.01(C)(2) was a legislative response to the Ohio Supreme Court's decision in *Village v. Gen. Motors Corp*., 15 Ohio St.3d 129, 472 N.E.2d 1079 (1984), syllabus, which held, "An injury which develops gradually over time as the result of the performance of the injured worker's job-related duties is compensable under R.C. 4123.01(C)." Specifically, the amendment was an apparent "response to the concerns set forth in Justice Holmes' concurring opinion in *Village*." *Cave v. Mihm*, 4th Dist. Pike No. 469, 1992 Ohio App. LEXIS 4299, 11 (Aug. 25, 1992) (Harsha, J., concurring). In his concurring opinion in *Village*, Justice Holmes was concerned that the majority's failure to limit its decision to injuries developing over a discernible period of time made it difficult "to distinguish between a gradual work-related condition and one that is the consequence of natural aging." *Id*. at 135. He suggested, therefore, that future "analysis must proceed on a case-by-case basis, leaving discretion in the trier of fact to determine whether the gradual condition was work-related or the product of aging." *Id*. at 136.

The temporal and conceptual relationship between R.C. 4123.01(C)(2) and *Village* suggests, therefore, that the amendment's purpose was to prevent recovery for repetitive-stress or cumulative-trauma injuries that were caused primarily by natural degenerative processes. *See also Varney v. Kroger Co.*, 10th Dist. Franklin No. 87AP-825, 1988 Ohio App. LEXIS 3387, 8 (Aug. 16, 1988) (noting that the amendment contains the rule precluding recovery for wear-and-tear injuries caused primarily by the natural aging process). Nothing in the amendment's language suggests an intent to deny compensation to impaired workers who suffer injuries as the result of a sudden work-related strain or trauma.

If the General Assembly had intended to preclude compensation for injuries that would not have resulted but for the presence of a preexisting health impairment, it could easily have done so. In fact, R.C. 4123.343(D)(1) provides full surplus-fund reimbursement to participating employers whenever a handicapped employee, including an employee afflicted with arthritis, suffers a work-related injury that "would not have occurred but for the pre-existing physical or mental impairment of the handicapped employee." By its express terms, R.C. 4123.343(D)(1) contemplates that compensation will be awarded to impaired employees for subsequent injuries that would not have occurred in the absence of the impairment. Thus, R.C. 4123.343(D)(1) expressly authorizes the very result that defendant's interpretation of R.C. 4123.01(C)(2) would prohibit. Certainly, defendant's proposed interpretation of R.C. 4123.01(C) does not comport with the fundamental requirement embodied in R.C. 4123.95 that the Workers' Compensation Act, and particularly its coverage formula, "is to be liberally construed *in favor of awarding benefits*." (Emphasis sic.) *Fisher*, *supra*, 49 Ohio St.3d at 278, 551 N.E.2d 1271.

Moreover, one would expect that if R.C. 4123.01(C)(2) was intended to supersede the eggshell-claimant rule, there would be some specific holding to that effect over the 28 years

since its enactment. To the contrary, however, Ohio courts have continued to adhere to the proposition that employers take their employees as they are and assume the risk that an employee with a preexisting condition may be injured under circumstances that would not injure an otherwise normal, healthy employee. *Schnipke v. Safe Turf Installation Group, LLC*, 190 Ohio App. 3d 89, 2010-Ohio-4173, 940 N.E.2d 993, ¶ 38 (3d Dist.); *Googash v. Conrad*, 2d Dist. Montgomery Nos. 20184, 20191, 2004-Ohio-5796, ¶ 11; *Ellis v. Meritor Automotive,* 5th Dist. Licking No. 00-CA-0015, 2001 Ohio App. LEXIS 288, 14-15 (Jan. 24, 2001).

In *Townsend v. Mayfield*, 82 Ohio App.3d 457, 612 N.E.2d 742 (4th Dist.1992), the claimant, who was responsible for servicing coin vending machines, was leaving the site of a major account for his employer when he saw a stranded motorist needing assistance. It was the employer's policy to help motorists in need, and the claimant stopped to assist the driver. While attempting to lift a five-gallon gasoline can, the claimant became dizzy and was unable to stand. The medical evidence showed that the claimant had suffered a ruptured blood vessel in his brain while lifting the gas can, but that he also suffered from preexisting arteriovenous malformation, which can cause a blood vessel in the brain to rupture at any time.

The administrator in *Townsend* contended that a verdict should have been directed in its favor based on the testimony of its medical expert, who opined that the claimant's condition was congenital and that his work activity had no relationship to the rupture. Rejecting the administrator's contention, the court explained:

> Basically, the Administrator argues that appellee's condition was congenital and that the vein could have burst at any time. Thus, Townsend did not sustain an injury which arose out of his employment, but, merely, one which coincidentally happened while Townsend was working.
>
> This argument confuses foreknowledge with cause. Knowledge that something is likely to happen does not cause it to happen. If Townsend had played a strenuous game of tennis just before the vein burst, one would say that

> the injury arose out of the course and scope of the tennis playing, i.e., that it was caused by the tennis playing.
>
> Every working person in Ohio is congenitally subject to certain limits in strength and stress, but, for most conditions, medical science cannot predict when these limits will be exceeded and result in injury. Doctors have a far greater knowledge about people with venous malformations, whose condition is much more predictable, but that knowledge is not causal. As medical knowledge increases, other conditions and injuries will become more predictable. The Administrator's position here is that as work-related injuries become predictable, they become noncompensable under R.C. Chapter 4123.
>
> This is not what the legislature intended when it defined "injury" in R.C. 4123.01(C) as "any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment."

Id. at 461, 612 N.E.2d 742.

2. Preexisting-Condition Exception: R.C. 4123.01(C)(4)

Defendant also relies on R.C. 4123.01(C)(4), which excludes from the definition of injury "[a] condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury." This exclusion was added to R.C. 4123.01(C) by Am.Sub.S.B. No. 7, effective June 30, 2006, in response to the Ohio Supreme Court's decision in *Schell v. Globe Trucking, Inc.*, 48 Ohio St.3d 1, 548 N.E.2d 920 (1990), which held that a "claimant who has proven a work-related aggravation of a pre-existing condition is not required to prove that the aggravation is substantial in order to be entitled to a determination of the extent of his participation in the State Insurance Fund." *E.g.*, *Bohl v. Cassens Transp. Co*., 3d Dist. Seneca No. 13-11-36, 2012-Ohio-2248, ¶ 17 (amendment added "in response to *Schell*").

By definition, however, R.C. 4123.01(C)(4) makes the existence of a preexisting condition relevant only when a claimant seeks an allowance of the preexisting condition. By clear negative implication, it does not make the presence of a preexisting condition relevant in new-injury claims. In this case, both parties agree that plaintiff is not seeking to participate in

the Fund for her underlying or preexisting arthritis. Moreover, all of the respective medical experts for both parties agree that the MRI of plaintiff's left knee taken in 2011, showed no evidence of a torn left quadriceps tendon, and there is no medical or other evidence in the record that indicates a preexisting tear of plaintiff's left quadriceps tendon. *See also Graham v. Workers' Comp. Appeal Bd.*, Pa.App. No. 63 C.D. 2011, 2011 Pa. Commw. Unpub. LEXIS 988, 9 (Dec. 8, 2011) (work sprain superimposed on preexisting condition "was not an aggravation of that condition, but rather a new injury separate from her degenerative condition").

C. Special Hazard

Defendant contends that "Plaintiff's alleged left knee injuries were not caused by anything unique or particular to her employment at Autoneum." Defendant maintains that "[i]n order for an employee to be eligible to participate in the workers' compensation fund, the cause of the injury must be particular to the employment." In support, defendant relies in part on *Copas v. Daugherty*, 4th Dist. Jackson No. 432, 1981 Ohio App. LEXIS 13350, 5 (Nov. 12, 1981), for the proposition that "[w]hen an employee, by reason of the activities, conditions and requirements of his employment, is subjected to a greater hazard than are the members of the general public, and he is accidentally injured thereby, a causal connection between the employment and his injury is established."

Defendant also points to cases in which compensation was found to have been properly denied where a claimant suffered carpal tunnel syndrome as a result of an infection from an unidentified source, *Kinsey v. Apex Bolt & Machine Co*., 6th Dist. Lucas No. L-12-1027, 2013-Ohio-630; where a claimant developed a blister from defective work boots that he purchased on his own, *Anderson v. Sherwood Food Distrib*., 8th Dist. Cuyahoga No. 86164, 2006-Ohio-101; and where a claimant working at a cash register strained his back while walking or turning

slightly to hand his manager a receipt, *Dailey v. AutoZone, Inc*., 11th Dist. Trumbull No. 99-T-0146, 2000 Ohio App. LEXIS 4574 (Sept. 29, 2000). In these cases, it was held that the claimants had failed to establish a causal connection between their injuries and a risk associated with their employment.

Specifically, the court in *Kinsey* found that "[i]t is not enough that an illness or injury manifest itself at work; there must be a causal connection." *Id*., 2013-Ohio-630 at ¶ 19. In *Anderson*, the court reasoned in part that no evidence suggested "conditions peculiar to the job site contributed to Anderson's injury." *Id*., 2006-Ohio-101 at ¶ 8. In *Dailey*, the court explained:

> In the present case, other than the fact that it occurred while appellant was at work, there was no evidence presented that appellant's injury was work related. Appellant was not lifting, pushing, or pulling anything at the time of the injury. Depending on which of appellant's explanations of the events leading to the injury is to be believed, appellant was either walking, or turning slightly with a paper receipt in his hand, when he first experienced the pain in his back. This was a normal movement that could easily have occurred at home, or any other place other than work. It was not specifically associated with his work nor could it be considered a hazard of working at AutoZone.

Id., 2000 Ohio App. LEXIS 4574 at 6-7.

Defendant's reliance on these cases is misplaced, for two reasons. First, in *Griffin v. Hydra-Matic Div., Gen. Motors Corp*., 39 Ohio St. 3d 79, 529 N.E.2d 436 (1988), at the syllabus, the Supreme Court of Ohio specifically held:

> "An injury sustained by an employee upon the premises of her employer arising during the course of employment is compensable pursuant to R.C. Chapter 4123 irrespective of the presence or absence of a special hazard thereon which is distinctive in nature or quantitatively greater than hazards encountered by the public at large."

In *Cummings v. Thriftway Food & Drug*, 1st Dist. Hamilton No. C-960160, 1996 Ohio App. LEXIS 4016 (Sept. 18, 1996), the court held that summary judgment should have been

granted in favor of a supermarket employee with a preexisting back condition who suffered a herniated disk as he stood up from a kneeling position after demonstrating to a new employee how to operate a floor scrubber. The employer argued that the act of standing up from a kneeling position was not a hazard of the employment, but a purely personal action. The court held, however, that since the employee's demonstration was undertaken for the employer's benefit, reasonable minds could only conclude that the injury arose out of his employment. *Id*. at 7-8. In so holding, the court explained that pursuant to *Griffin*, "[t]he finding of a causal connection between an employee's injury and his employment does not depend on the identification of a risk unique to the employment." *Id*. at 4.

Second, the decisions in *Kinsey*, *Anderson*, and *Dailey* are based on the absence of any identifiable employment contribution to the claimed injury. In fact, other courts have eschewed the reasoning of *Dailey* where an activity, event, or condition of employment is a precipitating or contributing factor in the claimant's injury.

In *Bahr v. Progressive Cas. Ins. Co*., 8th Dist. Cuyahoga No. 92620, 2009-Ohio-6641, the claimant was participating in a company mandated "team building exercise." As part of the activities, claimant's supervisor directed her to target him with left over water balloons. After throwing a water balloon at her supervisor, claimant twisted her knee as she turned to walk away and suffered a tear of the anterior cruciate ligament ("ACL") in her right knee. The trial court found that claimant was entitled to participate in the Workers' Compensation Fund and Progressive argued on appeal that the trial court erred in failing to apply the analysis set forth in *Dailey*. In distinguishing *Dailey*, the court in *Bahr* explained:

> The court [in *Dailey*] found significant the fact that Dailey "was not lifting, pushing, or pulling anything at the time of his injury"; he was either walking or turning slightly with paper in hand. "This was a normal movement." In this case, Bahr was not simply walking around the office in non-physically demanding

> activities. Bahr was in the midst of physically exerting herself in employment-related physical activities at the time she sustained her injuries."

(Citations omitted.) *Id*. at ¶ 33.

In *Emmert v. Mabe*, 1st Dist. Hamilton No. C-070315, 2008-Ohio-1844, the claimant was a housekeeper at a nursing home who suffered a torn meniscus in her knee when she bent over to pick up trash. Upon cross-motions for summary judgment, the trial court entered judgment in favor of the employer based largely on the decision in *Dailey*. On appeal, the court reversed the trial court's judgment and entered summary judgment in favor of claimant. In so doing, the court explained:

> The case at bar is distinguishable from *Dailey*. Whereas the employee's act of turning to talk to his manager was merely incidental to his job duties, Emmert's bending down to pick up litter or debris was the very essence of her job as a housekeeper. That she could have sustained the injury at home or elsewhere was immaterial in light of the uncontroverted evidence that the performance of her job duties had directly led to her injuries.

Id. at ¶ 10.

In any event, even if plaintiff was required to establish that her injury was caused by a hazard unique or particular to her employment, it is difficult to imagine a hazard more unique and peculiar to employment than what the plaintiff was doing in this case. One is hard-pressed to find a nonoccupational counterpart to twisting with full weight on one leg with the other in the air while pulling up on a dock plate. In fact, it appears that the court in *Dailey* would not have considered plaintiff's actions to be a "normal movement that could easily have occurred at home," since she was in fact "pulling [something] at the time of the injury." *Id*. at 7.

D. Unexplained and Idiopathic Causes

Defendant also contends that "Plaintiff has failed to eliminate her pre-existing left knee weakness as the cause of her alleged left knee injuries." In support, defendant relies on *Waller v.*

Mayfield, 37 Ohio St.3d 118, 524 N.E.2d 458 (1988), paragraph two of the syllabus, which held, "In workers' compensation cases involving an unexplained fall, the claimant has the burden of eliminating idiopathic causes." For purposes of workers' compensation, "idiopathic refers to an employee's pre-existing physical weakness or disease which contributes to the accident." *Id*. at 121, fn. 3.

Defendant maintains that although the decision in *Waller* is directed at unexplained falls, subsequent case law has "broadened the applicability of the *Waller* decision and the burden it places on a plaintiff to eliminate idiopathic and pre-existing causes." Specifically, defendant argues that courts have applied the *Waller* analysis in cases involving "injuries allegedly caused by normal daily activities." Defendant posits that the cause of plaintiff's injuries is unexplained because she was "performing an action, 'turning,' that is normally performed in the course of a regular day and not specific to her work at Autoneum."

Plaintiff argues that "even if some appellate courts have inappropriately applied *Waller* to circumstances other than unexplained falls * * * the holding in *Waller* applies only to workers' compensation cases in which the mechanism of injury is an unexplained fall." Plaintiff's position is supported by the decision in *Delker v. Ohio Edison Co*., 47 Ohio App.3d 1, 546 N.E.2d 975 (9th Dist.1989). In that case, the claimant suffered a torn right meniscus while changing his clothes in an employee locker room. The trial court granted summary judgment in favor of the plaintiff's employer, concluding in part that claimant had failed to eliminate idiopathic causes pursuant to *Waller*. Reversing the trial court's judgment, the court of appeals held that the *Waller* analysis is expressly limited to unexplained falls, that is, "a fall precipitated by some unidentifiable cause which results in injury to the claimant." *Id*. at 4. The court concluded that plaintiff's "injury did not occur as a result of a fall. Consequently, the standard

formulated by the Supreme Court in *Waller*, *supra*, requiring a claimant in an unexplained fall case to eliminate idiopathic causes * * * is inapplicable to the matter herein." *Id*. Moreover, it seems unlikely that the court in *Waller* intended for its decision to extend beyond the context of unexplained falls, considering its prefatory statement that "[a]n injury caused by an unexplained slip or fall presents a unique case under the workers' compensation laws." *Id*. at 122, 524 N.E.2d 458.

Nevertheless, as defendant points out, numerous appellate courts, including the Sixth District, have applied *Waller* in cases that do not involve an unexplained fall. Thus, courts have required the elimination of idiopathic causes where a claimant rolled his ankle while running, *Keith v. Chrysler*, LLC, 6th Dist. Lucas No. L-09-1126, 2009-Ohio-6974; where a claimant's knee buckled while walking down stairs, *Duvall v. J & J Refuse*, 5th Dist. Stark No. 2004CA00008, 2005-Ohio-223; where a claimant died as a result of choking, *Grubbs v. Admr., Bur. of Workers' Comp*., 5th Dist. Ashland No. CA 1236, 1998 Ohio App. LEXIS 1929 (Apr. 9, 1998); where a claimant died as a result of an asthma attack, *Nadolny v. Owens-Illinois, Inc*., 6th Dist. Wood No. 93WD055, 1994 Ohio App. LEXIS 1775 (Apr. 29, 1994); where a claimant was bending over to pick up a tray, *Jones v. Mayfield*, 3rd Dist. Marion No. 9-88-33, 1990 Ohio App. LEXIS 788 (Feb. 27, 1990); and where a claimant sneezed and dislocated his shoulder, *Grimes v. Mayfield*, 56 Ohio App.3d 4, 564 N.E.2d 732 (5th Dist.1989).

Assuming the applicability of *Waller* to cases involving accidents other than falls, defendant's reliance on the foregoing cases is still misplaced. Those cases do not suggest that every health-impaired claimant who seeks compensation for a subsequent injury to the affected body part must eliminate the preexisting condition as a cause of the injury. Nor do those cases

stand for the proposition that the cause of an injury is unexplained simply because the injury involved a weakened body part.

In *Keith* (ankle rolled while running), *Duvall* (knee buckled while descending stairs), and *Jones* (back sprained while bending over), there was no discernible employment-related explanation for why the accident or injury occurred. Specifically, there was no evidence that any condition of employment contributed to the accident in *Keith* or that the injuries in *Duvall* and *Jones* were precipitated by a work-related exertion or trauma. In *Grubs* (choking), *Nadolny* (asthma attack), and *Grimes* (sneeze), the precipitating episode was known to have arisen out of risks or conditions that were purely personal to the claimant, and the only remaining question was whether the employment placed the claimant in a position that exacerbated the result of the idiopathic episode. *Compare Indus. Comm. v. Polcen*, 121 Ohio St. 377, 169 N.E.2d 305 (1929) (coughing spell resulting in hernia compensable where coughing was precipitated by the emission of workplace fumes).

In this case, plaintiff's injury was precipitated by a specific work-related strain. As previously discussed, the maneuver performed by plaintiff in manipulating the dock plate was not a "normal activity * * * performed in the course of a regular day," as defendant suggests. Indeed, not only was the maneuver "specific to her work at Autoneum," but the night of plaintiff's injury was the first time that she performed the maneuver on her own without any help. The fact that the exertional force of the maneuver would not have resulted in a torn quadriceps tendon to a normal, healthy person, or to the plaintiff in the absence of her preexisting arthritis, does not make her injury unexplained for purposes of the *Waller* line of cases.

In *Fisher, supra,*, 49 Ohio St.3d at 280, 551 N.E.2d 1271, the Supreme Court of Ohio astutely observed that distinct sets of rules have developed in workers' compensation law to deal

with particular categories of cases. Certain doctrines have been carefully designed to reflect the considerations endemic to particular factual situations, and their application beyond those situations can lead to unsound and unfair results. R.C. 4123.01(C)(2) and the unexplained/idiopathic injury cases address discrete problems in workers' compensation law, and neither applies to the case at hand.

IV. PROPRIETY OF SUMMARY JUDGMENT

In this case, plaintiff's injuries were precipitated by a specific work-related exertion and her treating physicians opined to a reasonable degree of medical certainty that the injuries for which she seeks compensation were proximately caused by her employment activities on August 26, 2012. Although defendant's medical expert, Dr. Shiple, opined to a reasonable degree of medical certainty that plaintiff's work-related actions in maneuvering the dock plate were not the proximate cause of her injuries, his opinion in this case does not create a genuine issue of material fact as to whether plaintiff's injuries arose out of employment.

Dr. Shiple's opinion is expressly based on the premise that "[a] normal healthy tendon would not tear in that situation," i.e., "turning in preparation to jump on the dock plate." On cross-examination, Dr. Shiple explained:

> Q. So in other words * * * is it your contention that the activity that Ms. Luettke was engaged in did not cause any tearing of her tendon? Or is it your contention that the activity she was engaged in would not have caused similar damage to a healthier tendon?
>
> A. A healthy tendon would not have experienced damage relative to her activities.

Dr. Shiple's opinion does not create a genuine issue of material fact, because it does negate legal causation in this case. Dr. Shiple does not deny that plaintiff's injuries resulted from her work-related activity on August 26, 2012. Instead, he opines that the amount of force or

stress produced by that activity would not have damaged a healthy tendon. This, however, is not sufficient to preclude plaintiff's participation in the Fund. It follows, therefore, that plaintiff is entitled to summary judgment as a matter of law.

V. CONCLUSION

The Ohio Workers' Compensation Act was enacted "[f]or the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment." Ohio Constitution, Article II, Section 35. Its fundamental purpose "is to require as a matter of justice that injuries to workmen sustained in the course of their employment shall be regarded as a charge upon the business in which they are engaged, and compensation made therefor." *Indus. Comm. of Ohio v. Gintert*, 128 Ohio St. 129, 190 N.E. 400 (1934), paragraph one of the syllabus. Its provisions are to be liberally construed in favor of awarding benefits. *Fisher*, 49 Ohio St.3d at 278, 551 N.E.2d 1271; R.C. 4123.95. The arguments advanced by Autoneum North America, Inc. in support of its position that Ruth A. Luettke be denied workers' compensation benefits are not only contrary to well-established precedent, but also contrary to the clear public policy underlying the statute. For all of the foregoing reasons, judgment must be entered in favor of Ms. Luettke.

JUDGMENT ENTRY

The court finds that there are no genuine issues of material fact and that plaintiff, Ruth A. Luettke, is entitled to summary judgment as a matter of law. It is ordered that plaintiff Ruth A. Luettke have summary judgment against defendant Autoneum North America, Inc. It is further ordered that Autoneum North America, Inc.'s motion for summary judgment is denied. It is further ordered that plaintiff Ruth A. Luettke is entitled to participate in the Workers' Compensation Fund for the conditions "sprain left knee and acute partial quad tendon tear left."

October _____, 2014

_____
Frederick H. McDonald, Judge